

Risk Management



Nonphysician Providers and Liability Exposure to Supervising Psychiatrists

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This ongoing column is dedicated to providing information to our readers on managing legal risks associated with medical practice. We invite questions from our readers. The answers are provided by PRMS, Inc. (www.prms.com), a manager of medical professional liability insurance programs with services that include risk management consultation, education and onsite risk management audits, and other resources to healthcare providers to help improve patient outcomes and reduce professional liability risk. The answers published in this column represent those of only one risk management consulting company. Other risk management consulting companies or insurance carriers may provide different advice, and readers should take this into consideration. The information in this column does not constitute legal advice. For legal advice, contact your personal attorney. Note: The information and recommendations in this article are applicable to physicians and other healthcare professionals so “clinician” is used to indicate all treatment team members.

In an effort to increase revenue and lessen the burden on our group’s psychiatrists, we are contemplating hiring a nurse practitioner. Do we risk increasing our liability exposure with such a move?

Nonphysician providers (NPPs), such as nurse practitioners, can be a valuable asset to a busy practice. By being available to handle more routine follow-up visits and evaluations, NPPs may allow psychiatrists to devote more time to complex cases that require their greater expertise. With these added benefits, however, also comes a certain amount of risk.

LIABILITY EXPOSURE

In the event a claim or lawsuit arises as a result of care provided by an NPP, the supervising psychiatrist as well as the practice itself will almost invariably be made a party to the action. Depending upon the laws of your particular state, the allegation(s) of malpractice may take one of several forms:

- **Vicarious liability/respondent superior.** Vicarious liability is based upon the legal doctrine of respondent superior, which literally means *let the master respond*. Provided that the NPP was found to have committed the act of negligence within the scope of his or her employment (i.e., engaging in an act to further the business of the psychiatrist), the psychiatrist may also be found liable. This can occur even though the psychiatrist’s own care of the patient or supervision of the NPP was above reproach.
- **Negligent supervision.** Each state’s laws have provisions regarding the supervision of NPPs by the supervising psychiatrist(s). Should an error occur on the part

of the NPP, the plaintiff will undoubtedly look at whether there were any lapses in oversight to support an allegation of negligent supervision.

- **Negligent hiring/retention.** In order to establish a claim for negligent hiring or retention, the plaintiff must show that either the psychiatrist hired the NPP knowing him or her to be incompetent or unfit or, more likely, failed to conduct sufficient investigation to discover those deficiencies.
- **Lack of informed consent.** Allegations of lack of informed consent typically stem from the patient's belief that he or she was being treated by an actual psychiatrist. Patients may argue that, had they known the NPP was not a psychiatrist, they would never have consented to treatment or relied on his or her advice.

MINIMIZING EXPOSURE

Before even considering hiring an NPP, familiarize yourself with your particular state's laws and regulations concerning the use and supervision of NPPs. This will help you to determine what category of NPP (e.g., nurse practitioner or physician assistant) will be needed to engage in the types of activities you had envisioned and will give you an idea of what additional duties will be imposed upon you or your colleagues in the role of supervising psychiatrist(s). However, meeting the legal requirements as to supervision may not be sufficient to protect you from liability exposure. These requirements should, therefore, be construed as the minimum needed. As such, you should be prepared for your workload to actually increase initially. For example, your state may require

that the NPP's records be reviewed by the physician only once per quarter. However, it may be appropriate to review the NPP's records more frequently, particularly if you are not familiar with the NPP's skill level and expertise.

Once the decision is made to hire an NPP, additional prep work will be necessary. First you must be certain that any psychiatrist who is to act as a supervising psychiatrist has both the time and the temperament to fulfill this role. NPPs who do not have access to their supervising psychiatrists may find themselves in a position where they are forced to make decisions that are beyond their expertise and training. Likewise, an NPP may be reluctant to consult with a psychiatrist who appears unapproachable, and he or she may try to take on greater duties.

The American Psychological Association (APA) Guidelines for Psychiatrists in Consultative, Supervisory, or Collaborative Relationships with Nonphysician Clinicians states, "Psychiatrists working in administrative supervisory, consultative or collaborative relationships should at all times work towards maintaining and /or improving quality of care and undertake relationships with a nonphysician clinician only if they are able to keep themselves appropriately informed of the nature of treatment and the progress of those patients for whom they are acting as supervisor, consultant, or collaborator, and can assure themselves that the treatment is being carried out competently and adequately."

Prior to extending an offer of employment, the credentials of each candidate should be verified. This should include verifying at least the following:

- Education

- Licensing status and Board complaints
- Certification
- Continuing education hours
- Employment history
- Malpractice history
- Credit check
- Criminal background check

Copies of licenses and certificates should be obtained. The names and telephone numbers of individuals providing information regarding the candidate should also be obtained and kept on file. Some of these credentials, such as licensing status, need to be reverified on an ongoing basis, such as yearly.

While it may be tempting to hire an NPP and hold off on establishing set duties until you get a feel for his or her skills, this is a mistake. Before your NPP begins work, create a job description and set up practice protocols. Depending upon your state's laws, a formal collaborative agreement may also be required. Even if not required by law, there should be a written document clearly outlining the NPP's duties and limits of authority and the role of the supervising psychiatrist. This might include the following:

- Types of patients to be seen by the NPP
- When psychiatrist(s) should be consulted
- Prescriptive authority (if any)
- Role of the supervising psychiatrist
- Availability of supervising psychiatrist
- Psychiatrist assigned as "back-up" in the event supervising psychiatrist is unavailable
- Requirements for and frequency of chart review
- Frequency of skills review
- Provisions for protocol review

Just because your state's laws

permit NPPs to perform certain duties, do not feel compelled to allow your new hires to perform these same duties within your office until you have had an opportunity to observe their ability to carry out these functions. Do not allow an NPP's experience to lull you into complacency. Make certain that other psychiatrists and staff members have a clear understanding of the NPP's limits of authority. Never allow NPPs to perform services outside of the scope of your clinical practice.

PATIENT SATISFACTION

Many practices find that patients are often just as comfortable being seen by NPPs as they are being seen by psychiatrists. It is important, however, to make certain that patients clearly understand the role of the NPP. In order to avoid any possible confusion, consider the following:

- Introduce your NPPs and explain their involvement in patient care.
- Have the receptionist clearly state that the appointment is with an NPP.
- Practice brochures and websites should identify NPPs and explain how they are used within the practice.
- If NPPs are providing treatment, have them listed by name and title

on consent forms.

- Have NPPs wear name tags stating their credentials.
- Immediately correct those who refer to the NPP as "doctor."
- Allow patients who insist to be seen by a psychiatrist.

DOCUMENTATION

As with almost every other facet of medical care, documentation is key. The most conscientious efforts in training and supervision will be for naught if they are not properly documented. When reviewing the charts of your NPPs, always annotate to explain your role (e.g., "reviewed by" or "under the supervision of"). Remember to document any additional training given to the NPP and to regularly review protocols and/or collaborative agreements on a regular basis and update as appropriate.

RESOURCES

1. Dineen K. Responsibility and collaboration in health team care. *Virtual Mentor*. 2009;11(3): 247–252. <http://virtualmentor.ama-assn.org/2009/03/pfor1-0903.html> Accessed October 31, 2011.
2. American Psychiatric Association. Resource document. Guidelines for Psychiatrists in Consultative, Supervisory or Collaborative Relationships with Nonphysician

Clinicians. 2009.

www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/ResourceDocuments/200902.aspx. Accessed December 15, 2011.

3. The Psychiatrist's Program. Supervision of medical and nonmedical mental health care professionals/providers. *Rx for Risk*. 2002;11(1).

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